

REMARKS

The foregoing Amendment and the remarks which follow are responsive to the initial Office Action mailed March 16, 2000 in relation to the above-identified continuation patent application. In that Office Action, the Examiner objected to the drawings due to Figures 2, 3, 5-9, 13 and 14 purportedly containing improper hatching. Additionally, the Examiner rejected Claims 31-33 and 36-38 under 35 U.S.C. § 102(b) as being anticipated by the Merolle reference, and rejected Claims 31, 33-36 and 38-40 under § 102(b) as being anticipated by the Menke reference.

In addition to the foregoing, the Examiner provisionally rejected Claims 31-40 under 35 U.S.C. § 102(e) as being anticipated by Applicant's co-pending U.S. Application Serial No. 09/014,075 (the " '075 Application"). Similarly, Claims 31-40 were rejected by Examiner under Section 102(e) as being anticipated by Applicant's U.S. Patent No. 5,711,433 (the " '433 Patent"), and in particular Claims 1-42 thereof. Claims 31-40 were also rejected under 35 U.S.C. § 102(f) on grounds that the Applicant purportedly did not invent the claimed subject matter. Finally, the Examiner provisionally rejected Claims 31-40 under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over Claims 1-42 of the '433 Patent, and Claims 31-40 of the '075 Application.

With respect to the various Section 102(e) and Section 102(f) rejections forwarded by the Examiner, submitted herewith for the Examiner's consideration are copies of a Substitute Declaration and accompanying Statements Under 37 C.F.R. § 1.324(b) filed under separate cover with the PTO to facilitate the addition of Mr. Thom M. Perlmutter as a co-inventor to the present application with the originally named inventor Mr. Paul H. Bennett. As the Examiner may

already be aware, the '075 Application has matured into U.S. Patent No. 6,050,436 (the " '436 Patent") which issued on April 18, 2000. In view of the documents filed by the Applicant with the PTO prior to the issuance of the '436 Patent, Paul Bennett and Thom Perlmutter are identified in the issued '436 Patent as the co-inventors thereof. Similarly, on December 28, 1999, a Certificate of Correction was issued by the PTO adding Thom Perlmutter as a co-inventor on the '433 Patent. Applicant respectfully submits that in view of the submission of the aforementioned Substitute Declaration and accompanying Statements Under 37 C.F.R. § 1.324(b), the co-inventors named in the present application as well as the parent '436 and '433 Patents are identical. Due to the present application being a continuation of the '075 Application (which matured into the '436 Patent), which is itself a continuation of the application which matured into the '443 Patent, Applicant respectfully submits that the various Section 102(e) and Section 102(f) rejections forwarded by the Examiner have been overcome.

With regard to the obviousness-type double patenting rejection presented by the Examiner in the Office Action, submitted herewith for the Examiner's consideration is a duly executed Terminal Disclaimer wherein Applicant has agreed to disclaim that term of any patent issuing in relation to the present application which extends beyond the expiration date of the '443 Patent which is the earlier issued of the two parent cases. Applicant respectfully submits that the submission of the Terminal Disclaimer has overcome the Examiner's obviousness-type double patenting in relation to Claims 31-40.

Turning now to the Examiner's objection to the drawings, Applicant respectfully requests further information regarding the nature of the purported improper hatching pertaining to the plastic material. The drawings included in the present application are identical to those included

in the issued '443 and 436 Patents. No such objection has previously been forwarded in relation to the drawings, and Applicant is unsure as to what particular modifications the Examiner is requesting at this time.

Turning now to the Section 102(b) rejections of the pending claims under either the Merolle or Menke references, independent Claim 31 is directed to a tamper evident closure for a container having a neck defining an open upper end and an annular shoulder extending about the neck in close proximity to the open upper end thereof. In Claim 31, the closure is described as including a sealing cap which is attachable to the neck in the manner enclosing the open upper end thereof, and a tamper evident cap which is cooperatively engaged to the sealing cap and includes a selectively fracturable parting region which, when fractured, allows at least a portion of the tamper evident cap to be separated and removed from the sealing cap. As further recited in Claim 31, the tamper evident closure also comprises a closure retaining section which is coupled to the sealing cap and advanceable over the shoulder of the container upon the attachment of the sealing cap to the neck thereof. The tamper evident closure is described in Claim 31 as being sized and configured relative to the container such that the movement of the sealing cap away from the shoulder subsequent to the attachment of the sealing cap to the neck results in the engagement of the closure retaining section to the shoulder and the fracture of the parting region. Independent Claim 36 is similar in scope to independent Claim 31, differing primarily in the description of the sealing cap as being internally threaded so as to facilitate its threadable engagement to the externally threaded neck of the container.

Applicant respectfully submits that independent Claims 31 and 36 are not anticipated or rendered obvious by either the Merolle or Menke references cited in the Office Action and made

of record in the parent cases. As the Examiner is aware, the Merolle reference discloses a closure comprising an inner cap portion and an outer shell portion. The shell portion comprises a top wall 1 having a circular side wall 2 extending therefrom. The cap portion is inserted into the shell portion and itself comprises a top wall 6 having a circular side wall 7 extending therefrom. The side wall 7 is provided with internal screw-threads 8 which are adapted to cooperate with the externally threaded neck of a container such as a bottle. Formed about the side wall 2 of the shell portion is a reflexed portion 12 which is used to maintain a tight grip or engagement between the shell and cap portions.

As further disclosed in the Merolle reference, once the cap portion has been threadably engaged to the neck of the bottle, the lower edge 19 of the side wall 2 of the shell portion is inwardly bent about a bead 17 extending radially outward from the neck to prevent the closure from being removed therefrom. To facilitate the release of the closure so that the cap portion may be unscrewed from the bottle, scores 21, 22 are formed in the side wall 2 of the shell portion so as to define a tear-strip 20. The tear-strip 20 is provided in the shell portion below the cap portion therewithin. The tear out of the tear-strip 20 removes that section of the shell portion disposed above the tear-strip 20 from the cap portion and the neck of the bottle, thus allowing the cap portion to be unscrewed therefrom. In contrast to Claims 31 and 36, the Merolle reference includes no teaching or suggestion of either the movement of the cap portion away from the bead 17 or the rotation of the cap portion in a prescribed direction resulting in the engagement of the lower edge 19 to the bead 17 or the fracture of the scores 21, 22.

The Menke reference discloses a tamper-proof closure seal 10 which is mountable to a uniquely configured finish 11 of a beverage container such as a wine or champagne bottle which

is closed by a cap 13 threaded onto the upper end of the finish 11. The seal 10 comprises a skirt 15 divided into an upper portion 15a and a lower portion 15b by a weakened zone or separation 16. Formed on the inner periphery of the lower portion 15b of the skirt 15 below the separation 16 are a plurality of inwardly extending ribs 21 which are engageable to corresponding ribs 20 provided on a protrusion 12 of the finish 11. The engagement between the ribs 20, 21 is used to prevent the rotation of the seal 10 relative to the finish 11. Formed in the upper portion 15a of the skirt 15 is a score line 32 forming a weakened zone which, upon the pulling of a finger grip 31 within the upper portion 15a, facilitates the shearing of the separation 16, and hence the removal of the upper portion 15a from the cap 13 and finish 11 of the bottle. Like the Merolle reference discussed above, the Menke reference does not teach or suggest the movement of the cap 13 away from the protrusion 12 or the rotation of the cap 13 in a prescribed direction as facilitating the engagement of any structural element to the protrusion 12 or the fracture of the separation 16.

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On the basis of the foregoing, Applicant respectfully submits that the stated grounds of rejection have been overcome, and that Claims 31-40 are now in condition for allowance. An early Notice of Allowance is therefore respectfully submitted.

Respectfully submitted,

Date: 6/29/00

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